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8
9 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
10 **San Francisco Division**

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 MEDLAB, INC.,

15 PINNACLE HOLDINGS, INC.,

16 METABOLIC RESEARCH ASSOCIATES,
INC.,

17 U.S.A. HEALTH, INC., and

18 L. SCOTT HOLMES,
19 individually and as an officer of Medlab, Inc.;
Pinnacle Holdings, Inc.; Metabolic Research
20 Associates, Inc.; and U.S.A. Health, Inc.,

21 Defendants.

No. CV-08-00822 SI

Affidavit of Sarah Schroeder

Hearing Date: July 18, 2008
Hearing Time: 9:00 a.m.
Courtroom: 10, 19th Floor

22
23 I, Sarah Schroeder, declare and state:

- 24 1. I am an attorney with the Federal Trade Commission and represent the plaintiff in
25 this action. I submit this declaration in support of *Plaintiff's Reply to Defendants'*

ROGERS JOSEPH O'DONNELL
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Attorneys for Defendants
MEDLAB, INC., PINNACLE
HOLDINGS, INC., METABOLIC
RESEARCH ASSOCIATES, INC.,
U.S.A. HEALTH, INC. and
L. SCOTT HOLMES

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

MEDLAB, INC., et al.,

Defendants.

Case No. CV-08-0822-SI

**DEFENDANT U.S.A. HEALTH, INC.'S
INTERROGATORIES TO PLAINTIFF,
SET ONE**

PROPOUNDING PARTY: DEFENDANT U.S.A. HEALTH, INC.

RESPONDING PARTY: PLAINTIFF FEDERAL TRADE COMMISSION

SET NUMBER: ONE

TO PLAINTIFF FEDERAL TRADE COMMISSION: Pursuant to Federal Rule of

1 case, and, as to each expert so identified, state the subject matter on which he is expected to
2 testify, the substance of the facts and opinions to which he is expected to testify, and a
3 summary of the grounds for each opinion.

4 **INTERROGATORY NO. 4.**

5
6 Identify each Person who has communicated with You about the marketing, purchase,
7 or use of any Product, setting forth the identity of the Person, the date of the communication,
8 the substance of the communication, the action that took place as a result of the
9 communication, and what documents exist concerning the communication.

10 **INTERROGATORY NO. 5.**

11
12 In each dietary supplement action in which the FTC has obtained monetary damages
13 purportedly for consumer redress, identify the portion of funds that were paid to consumers.

14 **INTERROGATORY NO. 6.**

15 Identify any target audience group or class of readers of viewers who reviewed any
16 Publication, including the Publications reviewed, dates of such reviews, the results of the
17 reviews, the Persons involved in the reviews.

18 **INTERROGATORY NO. 7.**

19
20 If you are seeking an award of any sum of money, whether by damages or otherwise,
21 state the full amount of money you seek and describe the manner in which the amount was
22 calculated. Your description should include each element of damage or component of
23 recovery that you seek, the amount sought for each element or component, the manner in
24 which each element or component of the calculation was determined, and identify the source
25 of each number used in the calculation.
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1 **INTERROGATORY NO. 8.**

2 Describe how the FTC established regulatory standards governing the quantity and
3 quality of substantiation Defendants must allegedly possess at the time they make express and
4 implied claims in advertisements, and identify all Persons involved in such process.
5

6 **INTERROGATORY NO. 9.**

7 Do you contend that any Publication makes representations regarding Zyladex or
8 Zyladex Plus that are not supported by the level of substantiation referred to in the
9 Publication?
10

11 **INTERROGATORY NO. 10.**

12 If the answer to the preceding Interrogatory is anything but an unqualified no, describe
13 all facts and identify all documents that support your answer.

14 **INTERROGATORY NO. 11.**

15 Do you contend that any Publication makes representations regarding Questral AC or
16 Questral AC Fat Killer Plus that are not supported by the level of substantiation referred to in
17 the Publication?
18

19 **INTERROGATORY NO. 12.**

20 If the answer to the preceding Interrogatory is anything but an unqualified no, describe
21 all facts and identify all documents that support your answer.
22

23 **INTERROGATORY NO. 13.**

24 Do you contend that any Publication makes representations regarding Rapid Loss 245
25 or Rapid Loss R_x that are not supported by the level of substantiation referred to in the
26 Publication?
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28

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MEDLAB, INC., PINNACLE
HOLDINGS, INC., METABOLIC
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U.S.A. HEALTH, INC. and
L. SCOTT HOLMES

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

MEDLAB, INC., et al.,

Defendants.

Case No. CV-08-0822-SI

**DEFENDANTS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO
PLAINTIFF FEDERAL TRADE
COMMISSION**

PROPOUNDING PARTIES: DEFENDANTS MEDLAB, INC., U.S.A. RESEARCH,
INC., PINNACLE HOLDINGS, INC., METABOLIC
RESEARCH ASSOCIATES, INC., AND L. SCOTT
HOLMES

RESPONDING PARTY: PLAINTIFF FEDERAL TRADE COMMISSION

SET NUMBER: ONE

1 representations relating to Zyladex or Zyladex Plus are false.

2 REQUEST FOR PRODUCTION NO. 9:

3 All documents relating to the allegation that the representations relating to Zyladex or
4 Zyladex Plus were not substantiated at the time the representations were made.

5 REQUEST FOR PRODUCTION NO. 10:

6 All documents relating to the safety of any ingredient contained in Zyladex Plus.

7 REQUEST FOR PRODUCTION NO. 11:

8 All documents relating to the efficacy of any ingredient contained in Zyladex Plus in
9 providing nutritional support, enhancing weight loss, or improving any structure or function
10 of the body.
11

12 REQUEST FOR PRODUCTION NO. 12:

13 All documents relating to the efficacy of Zyladex Plus in providing nutritional
14 support, enhancing weight loss, or improving any structure or function of the body.
15

16 REQUEST FOR PRODUCTION NO. 13:

17 All documents relating to any enforcement action brought by the FTC against any
18 other company or individual involving any ingredient in Zyladex or Zyladex Plus for weight
19 loss purposes.
20

21 REQUEST FOR PRODUCTION NO. 14:

22 All documents relating to the allegation contained in the Complaint that
23 representations relating to Questral AC or Questral AC Fat Killer Plus are false.

24 REQUEST FOR PRODUCTION NO. 15:

25 All documents relating to the allegation that the representations relating to Questral
26 AC or Questral AC Fat Killer Plus were not substantiated at the time the representations were
27
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1 made.

2 REQUEST FOR PRODUCTION NO. 16:

3 All documents relating to the safety of any ingredient contained in Questral AC or
4 Questral AC Fat Killer Plus.

5 REQUEST FOR PRODUCTION NO. 17:

6 All documents relating to the efficacy of any ingredient contained in Questral AC or
7 Questral AC Fat Killer Plus in providing nutritional support, enhancing weight loss, or
8 improving any structure or function of the body.

9 REQUEST FOR PRODUCTION NO. 18:

10 All documents relating to the efficacy of Questral AC or Questral AC Fat Killer Plus
11 in providing nutritional support, enhancing weight loss, or improving any structure or
12 function of the body.

13 REQUEST FOR PRODUCTION NO. 19:

14 All documents relating to any enforcement action brought by the FTC against any
15 other company or individual involving any ingredient in Questral AC or Questral AC Fat
16 Killer Plus for weight loss purposes.

17 REQUEST FOR PRODUCTION NO. 20:

18 All documents relating to the allegation contained in the Complaint that
19 representations relating to Rapid Loss 245 or Rapid Loss R_x are false.

20 REQUEST FOR PRODUCTION NO. 21:

21 All documents relating to the allegation that the representations relating to Rapid Loss
22 245 or Rapid Loss R_x were not substantiated at the time the representations were made.

23 REQUEST FOR PRODUCTION NO. 22:

1 All documents relating to the safety of any ingredient contained in Rapid Loss 245 or
2 Rapid Loss R_x.

3 REQUEST FOR PRODUCTION NO. 23:

4 All documents relating to the efficacy of any ingredient contained in Rapid Loss 245
5 or Rapid Loss R_x in providing nutritional support, enhancing weight loss, or improving any
6 structure or function of the body.

7 REQUEST FOR PRODUCTION NO. 24:

8 All documents relating to the efficacy of Rapid Loss 245 or Rapid Loss R_x in
9 providing nutritional support, enhancing weight loss, or improving any structure or function
10 of the body.

11 REQUEST FOR PRODUCTION NO. 25:

12 All documents relating to any enforcement action brought by the FTC against any
13 other company or individual involving any ingredient in Rapid Loss 245 or Rapid Loss R_x for
14 weight loss purposes.

15 REQUEST FOR PRODUCTION NO. 26:

16 To the extent not otherwise produced and to the extent relevant to this litigation,
17 produce all documents relating to any false or materially misleading representation[s] made
18 with respect to any other product advertised by any defendant in this action.

19 REQUEST FOR PRODUCTION NO. 27:

20 To the extent not otherwise produced and to the extent relevant to this litigation,
21 produce all documents relating to any representation made that is the subject matter of this
22 action that was not substantiated at the time such representation was made.

23 REQUEST FOR PRODUCTION NO. 28:

1 REQUEST FOR PRODUCTION NO. 108:

2 All documents identified in Plaintiff's Initial Disclosures Pursuant to Rule 26(a)(1).

3 REQUEST FOR PRODUCTION NO. 109:

4 All affidavits, written statements, declarations, deposition transcripts and exhibits, and
5 court testimony made by any Defendant and a copy of all requested or subpoenaed documents
6 provided or made available by you, in any federal, state or local government investigation or
7 litigation concerning the marketing of any product by any Defendant or by any company in
8 which any Defendant was an officer or director or majority shareholder.
9

10 REQUEST FOR PRODUCTION NO. 110:

11 All affidavits, written statements, declarations, deposition transcripts and exhibits, and
12 court testimony made by any Defendant and a copy of all requested or subpoenaed documents
13 provided or made available by you, in any private action concerning the marketing of product
14 by any Defendant or by any company in which any Defendant was an officer or director or
15 majority shareholder.
16

17 REQUEST FOR PRODUCTION NO. 111:

18 All documents referring or relating to any other investigations or actions taken by any
19 non-governmental dispute resolution organizations (including but not limited to the Better
20 Business Bureau and the National Advertising Division of the Council of Better Business
21 Bureaus) concerning any advertising for any product sold by any Defendant or by any
22 company in which any Defendant was an officer, director or majority shareholder.
23

24 REQUEST FOR PRODUCTION NO. 112:

25 All documents relating to any enforcement action brought by the FTC against any
26 other company or individual involving any ingredient in the Products.
27
28

1 REQUEST FOR PRODUCTION NO. 113:

2 All documents relating to the timing of the filing of this action in February 2008.

3 REQUEST FOR PRODUCTION NO. 114:

4 To the extent not otherwise produced, all documents relating to your contention that
5 Defendants made, committed, had knowledge of, or participated in any misrepresentation or
6 other deceptive practice that is alleged in the Complaint.
7

8 REQUEST FOR PRODUCTION NO. 115:

9 All documents concerning whether any of the alleged misrepresentations described in
10 the Complaint were the type upon which a reasonable person would rely.
11

12 REQUEST FOR PRODUCTION NO. 116:

13 For each claim made by Defendants that you contend is false or materially misleading
14 or unsubstantiated produce all documents relating to each such claim.
15

16 REQUEST FOR PRODUCTION NO. 117:

17 All documents relating to any target audience group or class of readers of viewers who
18 reviewed any Publication.

19 REQUEST FOR PRODUCTION NO. 118:

20 All documents which relate to the FTC's establishment of regulatory standards
21 governing the quantity and quality of substantiation Defendants must possess at the time they
22 make express and implied claims in advertisements.
23

24 REQUEST FOR PRODUCTION NO. 119

25 All documents which may negate any allegation in the Complaint.

26 REQUEST FOR PRODUCTION NO. 120

27 All documents relating to any contention that representations contained in any
28